

IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON

STATE OF WASHINGTON,)	No. 27168-4-III
)	
Respondent,)	
)	
v.)	Division Three
)	
JUAN MANUEL PADILLA,)	
)	
Appellant.)	UNPUBLISHED OPINION

Korsmo, J. — Juan Manuel Padilla was charged in the Douglas County Superior Court with two counts of forgery after he twice passed counterfeit bills in East Wenatchee. The trial court declined to allow him to present evidence that another man had pleaded guilty to passing counterfeit bills with the same serial number in Wenatchee. We find no abuse of discretion and affirm the convictions.

FACTS

The two charged incidents involved Mr. Padilla passing counterfeit bills at casinos in East Wenatchee. The first incident involved Mr. Padilla passing a \$100 bill at Kegler's

Casino on June 26, 2007. A police officer talked to Mr. Padilla, who insisted he must have received the bill during the operation of his taco wagon. He was not arrested.

The second charged incident took place at the Buzz Inn Casino on July 22, 2007.¹ Mr. Padilla passed two wet and sticky \$50 bills. An officer responded and talked to Mr. Padilla. He denied knowing the bills were forged. The officer did not arrest him. The accounting manager for the casino contacted police the next day after four additional counterfeit \$50 bills were found in the night's receipts.

Charges were filed September 26, 2007, and Mr. Padilla was arrested on November 7. Trial began the following April. Mr. Padilla moved *in limine* pre-trial to admit evidence of a Secret Service report concerning counterfeit bills seized in the greater Wenatchee area. He also asked to be allowed to admit evidence that Jamie McGahuey had pleaded guilty to two counts of third degree theft in Chelan County for passing counterfeit bills in Wenatchee. The trial court denied both requests, finding the evidence irrelevant. In addition, the court found that Mr. McGahuey's guilty plea statement forms were inadmissible hearsay.

A police officer did testify at trial that Mr. McGahuey had passed two counterfeit

¹ An uncharged incident occurred in Wenatchee on July 7, 2007. Mr. Padilla passed a counterfeit \$50 bill at White's Bakery. Mr. Padilla, who had been a regular patron of the bakery, never returned after passing the bill. Police did not contact him concerning that incident.

\$100 bills bearing the same serial number as that on the \$100 bill Mr. Padilla passed.

Mr. McGahuey had admitted passing the bills and was arrested at that time.

Trial counsel jointly compiled Exhibit 10, a listing of counterfeit bills passed in the Wenatchee area. Counsel for Mr. Padilla renewed the motion to admit the McGahuey guilty plea evidence in conjunction with that exhibit. The trial court again denied the request, finding that the evidence still was not relevant.

The jury convicted Mr. Padilla on one count of forgery involving the two \$50 bills passed at the Buzz Inn Casino and acquitted him on the count involving the \$100 bill. He subsequently appealed to this court.

ANALYSIS

Evidence is relevant if it has “any tendency to make the existence of any fact that is of consequence to the determination of the action more probable or less probable.” ER 401. A trial court’s evidentiary ruling in this regard is reviewed for manifest abuse of discretion. *State v. Neal*, 144 Wn.2d 600, 609, 30 P.3d 1255 (2001). Discretion is abused when it is exercised on untenable grounds or for untenable reasons. *State ex rel. Carroll v. Junker*, 79 Wn.2d 12, 26, 482 P.2d 775 (1971). Misapplying the law constitutes abuse of discretion by a trial judge. *Neal*, 144 Wn.2d at 609.

The trial court decided that the evidence in question was not relevant. We agree

that this ruling was based on tenable grounds.²

Appellant sought to admit the evidence to suggest that Mr. McGahuey was the person passing counterfeit bills in the area and that Mr. Padilla was simply an innocent launderer of bills passed on at his business. When “other suspects” evidence is offered at trial, it cannot be admitted unless it tends “clearly to point to someone other than the defendant as the guilty party.” *In re Pers. Restraint of Lord*, 123 Wn.2d 296, 316, 868 P.2d 835, *cert. denied*, 513 U.S. 849 (1994). This evidence fails that test.

Mr. Padilla contends that “major” uttering of counterfeit bills ended when Mr. McGahuey was incarcerated. However, the record does not support the claim.³ Exhibit 10 lists Mr. McGahuey’s two offenses, both committed June 24, 2007, as the first of the 26 bills passed in the greater Wenatchee area. Both were \$100 bills with the same serial number as the \$100 bill Mr. Padilla passed (but was acquitted of charges) two days later. The remaining bills are all \$50 bills. None of those were linked to Mr. McGahuey; seven of those bills were linked to Mr. Padilla. This evidence does not suggest that “major”

² Accordingly, we do not address the issue of whether the McGahuey evidence might also have been inadmissible hearsay. We also need not address the State’s argument that any error would have been harmless in light of the jury’s acquittal on the count involving the \$100 bill with the same serial number as that passed by Mr. McGahuey.

³ We have not been supplied with Exhibit 9 or with the proposed exhibits that Mr. Padilla unsuccessfully sought to have admitted at trial. No written indication of when Mr. McGahuey was in custody is before this court.

uttering of counterfeit bills ended with the arrest of Mr. McGahuey.

Even if the record would have shown that Mr. McGahuey was arrested later during the counterfeiting spree, nothing in the record of this case links him to any activity but the two June 24 incidents to which he pleaded guilty. Most certainly the evidence does not clearly point to Mr. McGahuey as the guilty party in the other incidents.

Finally, even if the evidence had pointed somewhat in Mr. McGahuey's direction, that did not preclude Mr. Padilla from being involved. Many different bills were passed at many locations in Douglas and Chelan counties. There is no reason to believe that the two men were not working together or with other confederates. Mr. Padilla admittedly passed several bills on at least three occasions and passed more counterfeit bills on more occasions than Mr. McGahuey. This evidence of Mr. McGahuey's guilt simply did not relieve Mr. Padilla from suspicion or otherwise suggest that Mr. McGahuey was the only criminal actor here.

The jury did consider evidence that Mr. McGahuey had passed, and admitted passing, two counterfeit \$100 bills. The additional fact that he pleaded guilty to those crimes simply did not make that fact "of consequence to the determination of the action more probable or less probable" in the trial of Mr. Padilla. ER 401. The trial court correctly found the evidence was not relevant.

No. 27168-4-III
State v. Padilla

Finding no manifest abuse of discretion by excluding the proffered evidence, we affirm the conviction.

A majority of the panel has determined this opinion will not be printed in the Washington Appellate Reports, but it will be filed for public record pursuant to RCW 2.06.040.

Korsmo, J.

WE CONCUR:

Kulik, A.C.J.

Sweeney, J.